Supreme Court, U. S.
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In the Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-1454

JACK O. PEARSON,
Appellant,

VERSUS

THE STATE OF OKLAHOMA,
Appellee.

ON APPEAL FROM THE OKLAHOMA COURT OF CRIMINAL APPEALS

APPELLANT'S REPLY MEMORANDUM TO MOTION TO DISMISS OR AFFIRM

STEPHEN JONES
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Attorney for Appellant

May, 1977

UTTERBACK TYPESETTING CO., 519 W. CALIF., OKLAHOMA CITY, PH. 235-0030

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Although Appellee makes a "challenge to the jurisdictional statement" the Appellee neither explains nor develops its "challenge" either by citations to the record or to holdings of this Court.

None of the authorities or reasonings submitted by the Appellant in his statement of the case (pp. 6-10 of the Jurisdictional Statement) are questioned, or distinguished.

Nor does Appellee refute that the questions are substantial.

Thus, Appellee's "challenge" is undeveloped and unexplained.

Appellee does not challenge our thesis that a majority of this Court has never upheld warrantless consensual re-

cording of telephone conversations. The two cases relied upon by the Appellee are inapposite. *Lopez* v. *United States*, 373 U.S. 427 (1963), did not involve monitoring and recording of a telephone conversation. *Hoffa* v. *United States*, 385 U.S. 293 (1966), involved the use of secret agents and there was no electronic eavesdropping or recording involved.

The Appellee attempts to distract the Court's attention from our second argument by a bold face caption, "The Evidence Was Sufficient to Establish that the Appellant Conspired to Commit a Felony." This was not the issue presented in the Jurisdictional Statement. The question is whether the Oklahoma statute on conspiracy, as construed and applied in this case, which permits a defendant to be found guilty of conspiracy when all other co-conspirators have been dismissed, either by the trial court or the appellate court for insufficient evidence, is repugnant to the United States Constitution. Appellant fully agrees with the statement "It is not necessary, in order to sustain a conviction for conspiracy, that co-conspirators be charged or convicted." However, this is not the factual situation here. When all co-conspirators have been charged and the charge is dismissed for insufficient evidence, those same individuals cannot be found to be conspirators in order to meet the plurality requirement of the Constitution of the United States that a conspiracy consists of more than one person.

Respectfully submitted,

STEPHEN JONES
P. O. Box 3339
Enid, Oklahoma 73701
Attorney for Appellant

May, 1977

CERTIFICATE OF SERVICE

I, Stephen Jones, a member of the Bar of the Supreme Court of the United States and counsel of record for Jack O. Pearson, Appellant herein, hereby certify that on the ____ day of _____, 1977, pursuant to Rule 33, Rules of the Supreme Court, I served three copies of the foregoing Appellant's Reply Memorandum to Motion to Dismiss or Affirm on each of the parties herein, as follows:

On the State of Oklahoma, Respondent herein, by depositing such copies in the United States Post Office, in Oklahoma City, Oklahoma, with first class postage prepaid, properly addressed to the post office address of Larry Derryberry, Attorney General of the State of Oklahoma, the above-named Respondent's counsel of record, at the State Capitol in Oklahoma City, Oklahoma.

All parties required to be served have been served.
DATED this ____ day of _____, 1977.

Stephen Jones
Post Office Box 3339
Enid, Oklahoma 73701
Attorney for Appellant